Hearing Date and Time: November 7, 2013 at 2:00 p.m. (ET)
Objection Deadline: October 21, 2013 at 4:00 p.m. (ET)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, et al.,	Chapter 11
Debtors.	Jointly Administered

NOTICE OF DEBTORS' COMBINED OBJECTION TO PROOFS OF CLAIM NOS. 1 AND 440 FILED BY WENDY ALISON NORA AGAINST RESIDENTIAL CAPITAL, LLC AND RESIDENTIAL FUNDING COMPANY LLC PURSUANT TO BANKRUPTCY CODE SECTION 502(b) AND BANKRUPTCY RULE 3007

PLEASE TAKE NOTICE that the undersigned has filed the attached *Debtors' Combined Objection to Proofs of Claim Nos. 1 and 440 Filed by Wendy Alison Nora Against Residential Capital, LLC and Residential Funding Company LLC Pursuant to Bankruptcy Code Section 502(b) and Bankruptcy Rule 3007* (the "Objection") which seeks to alter your rights by disallowing your claims against the above-captioned Debtors.

PLEASE TAKE FURTHER NOTICE that a hearing on the Objection will take place on **November 7, 2013 at 2:00 p.m. (Eastern Time)** before the Honorable Martin

Glenn, at the United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004-1408, Room 501.

PLEASE TAKE FURTHER NOTICE that responses, if any, to the Objection must be made in writing, conform to the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the Southern District of New York, and the Notice, Case Management, and Administrative Procedures approved by the Bankruptcy Court [Docket No. 141], be filed electronically by registered users of the Bankruptcy Court's electronic case filing system, and be served, so as to be received no later than **October 21, 2013 at 4:00 p.m. (Eastern Time)**, upon (a) counsel to the Debtors, Morrison & Foerster LLP, 1290 Avenue of the Americas, New York, NY 10104 (Attention: Gary S. Lee, Norman S. Rosenbaum and Jordan A. Wishnew); (b) the Office of the United States Trustee for the Southern District of New York, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, NY 10014 (Attention: Tracy Hope Davis, Linda A. Riffkin, and Brian S. Masumoto); (c) counsel for the committee of unsecured creditors, Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, NY 10036 (Attention: Kenneth Eckstein and Douglas Mannal); and (d) special borrowers counsel for the committee of unsecured creditors, SilvermanAcampora LLP, 100 Jericho Quadrangle, Suite 300, Jericho, NY 11753 (Attention: Ronald J. Friedman).

[*Remainder of Page Intentionally Left Blank*]

PLEASE TAKE FURTHER NOTICE that if you do not timely file and serve a written response to the relief requested in the Objection, the Bankruptcy Court may deem any opposition waived, treat the Objection as conceded, and enter an order granting the relief requested in the Objection without further notice or hearing.

Dated: September 20, 2013

/s/ Norman S. Rosenbaum

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In re:	)	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, et al.,	)	Chapter 11
Debtors.	)	Jointly Administered

DEBTORS' COMBINED OBJECTION TO PROOFS OF CLAIM NOS. 1 AND 440 FILED BY WENDY ALISON NORA AGAINST RESIDENTIAL CAPITAL, LLC AND RESIDENTIAL FUNDING COMPANY LLC PURSUANT TO BANKRUPTCY CODE SECTION 502(B) AND BANKRUPTCY RULE 3007

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TO THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE:

Residential Capital, LLC and its affiliated debtors in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), as debtors and debtors in possession (collectively, the "Debtors"),[1] hereby file this combined objection (the "Objection") seeking to disallow and expunge proof of claim No. 1 (the "ResCap Claim") filed against Debtor Residential Capital, LLC ("ResCap") in the face amount of $10 billion dollars and proof of claim no. 440, a secured claim of $119,000 (the "RFC Claim" and together with the ResCap Claim, the "Claims") filed against Debtor Residential Funding Company, LLC ("RFC" and together with ResCap, the "Subject Debtors") by Wendy Alison Nora ("Nora") pursuant to section 502(b) of title 11 of the United States Code (the "Code") and Rule 3007(a) of the Federal Rules of Bankruptcy Procedure (the "FRBP"). Nora's alleged claims are barred by (i) the doctrines of *res judicata* and collateral estoppel due to the final judgments of a state court and a federal court, (ii) the *Rooker-Feldman* doctrine, which denies subject matter jurisdiction to federal courts to review final state court judgments; and (iii) failure to plead in accordance with federal pleading standards. The Claims also should be dismissed and disallowed because they fail to meet the applicable standards for stating a claim for relief.[2] The Debtors seek entry of an order substantially in the form annexed hereto as Exhibit 1 (the "Proposed Order") granting the relief they have requested. In support of the Objection, the Debtors submit the Declaration of Lauren Graham Delehey (annexed hereto as Exhibit 2, the "Delehey Declaration") and respectfully represent as follows:

[1] The names of the Debtors in these cases and their respective tax identification numbers are identified on Exhibit 1 to the *Affidavit of James Whitlinger, Chief Financial Officer of Residential Capital, LLC, in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 6], dated May 14, 2012.

[2] The Debtors reserve all their rights to amend this Objection should any further bases come to light.

JURISDICTION, VENUE AND STATUTORY PREDICATE

1. This Court has jurisdiction over this Objection under 28 U.S.C. § 1334. This matter is a core proceeding under 28 U.S.C. § 157(b). Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicate for the relief requested herein is section 502(b) of the Code and the procedural predicate is FRBP 3007(a) ("Rule 3007(a)").

PRELIMINARY STATEMENT

3. The ResCap Claim seeks $10 billion and the RFC Claim is for $119,000. The Claims are barred by *res judicata*, collateral estoppel and the *Rooker-Feldman* doctrine (which prohibits all federal courts save the Supreme Court from acting as an appellate court to review final state court judgments). Twice before Nora has made and lost the claims she is making here. In the first instance, Nora defended and lost a foreclosure action brought by RFC in Wisconsin state court; the judgment there is final. She then raised the same claims that had been adjudicated in the state court foreclosure in a lawsuit she commenced in federal court in Wisconsin. The court there dismissed the claims based on *Rooker-Feldman*. That judgment, too, is final. She is now making those same claims yet again here. The Wisconsin state court judgment is *res judicata* and collateral estoppel on the merits as to her. The federal court ruling is *res judicata* as to the applicability of *Rooker-Feldman* to the claims. And in any event, *Rooker-Feldman* applies equally in this Court. Finally, in violation of Rule 8(a)(2) ("Rule 8(a)(2)") of the Federal Rules of Civil Procedure (the "FRCP") the Claims wholly fail to set

forth a "short and plan statement" (let alone an intelligible one) of Nora's alleged claims against the Subject Debtors.[3]

BACKGROUND

A. The Chapter 11 Cases

4. On May 14, 2012, each of the Debtors filed a voluntary petition in this Court for relief under chapter 11 of the Bankruptcy Code. The Debtors are managing and operating their businesses as debtors in possession pursuant to Code sections 1107(a) and 1108. These Chapter 11 Cases are being jointly administered pursuant to FRBP 1015(b).

5. On May 16, 2012, the United States Trustee for the Southern District of New York appointed a nine member official committee of unsecured creditors. (*See* Dkt. No. 2.)

6. On July 17, 2012, the Court entered an order [Docket No. 798] appointing Kurtzman Carson Consultants LLC ("KCC") as the notice and claims agent in these Chapter 11 Cases. Among other things, KCC is authorized to (a) receive, maintain, and record and otherwise administer the proofs of claim filed in these Chapter 11 cases and (b) maintain official claims registers for each of the Debtors.

7. On August 29, 2012, this Court entered an order approving the Debtors' motion to establish procedures for filing proofs of claim in the Chapter 11 Cases (Dkt. No. 1309) (the "Bar Date Order").[4] On March 21, 2013, the Court entered an order, *inter alia*, establishing procedures for filing objections to proofs of claim [Docket No. 3294] (the "Procedures Order").

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[3] Because of the identity of Nora's allegations and legal issues, it is appropriate for the Debtors to file this combined objection against the Claims.

[4] The Bar Date Order established, among other things, (i) November 9, 2012 at 5:00 p.m. (Prevailing Eastern Time) as the deadline to file proofs of claim by virtually all creditors against the Debtors (the "General Bar Date") and prescribing the form and manner for filing proofs of claim; and (ii) November 30, 2012 at 5:00 p.m. (Prevailing Eastern Time) as the deadline for governmental units to file proofs of claim (the "Governmental Bar Date"). (Bar Date Order ¶¶ 2, 3). On November 7, 2012, the Court entered an order extending the General Bar Date to November 16, 2012 at 5:00 p.m. (Prevailing Eastern Time) [Docket No. 2093]. The Governmental Bar Date was (Cont.'d)

B. The Nora Claims

8. On May 18, Nora filed the ResCap Claim (Claim No. 1) in the amount of $10 billion as a general unsecured claim. On August 29, 2012, Nora filed the RFC Claim (Claim No. 440) a secured claim for $119,000. The ResCap claim states in Box 2 that the basis for the claim is "contingent RICO claim in litigation – nondischargeable." In Box 2 of the RFC claim, Nora entered as the basis for her alleged claim, "in rem claim for real property illegally taken by Debtor." The ResCap Claim simply attached, without further explanation, a copy of Nora's March 18, 2013 Amended Complaint against (the "District Court Amended Complaint") the Subject Debtors, some of the other Debtors and some nondebtors in *Nora v. Residential Funding Company, LLC*, United States District Court for the Western District of Wisconsin (the "District Court"), Case No. 10-748 (the "District Court Action"). (Delehey Declaration ¶ 7.) [5] There was no attachment of any kind to the RFC Claim. The Amended Complaint names 24 individual and corporate defendants, is 19 pages long (plus some exhibits), has 129 paragraphs, and another 17 paragraphs of requested relief. Its allegations are disorganized and meandering.[6] Frequently, it makes use of the term the GMAC Racketeering Enterprise" to refer in an undifferentiated

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not extended. To date, approximately 7,160 proofs of claim have been filed in these Chapter 11 Cases as reflected on the Debtors' claims registers.

[5] Much of the requisite factual background can be found in the District Court's Opinion and Order (filed September 30, 2012, Dkt. No. 69) (the "Opinion") that granted the defendants' motion to dismiss the District Court Amended Complaint in the District Court Action or in the District Court Amended Complaint itself. Other facts are in the Delehey Declaration. Although Nora has appealed the Opinion and dismissal to the United States Court of Appeals for the Seventh Circuit, *see Nora v. Residential Funding Co., LLC*, Case No. 13-1660 (the "Seventh Circuit Appeal"), the District Court's judgment is final for purposes of *res judicata*, and collateral estoppel. *See, e.g., United States v. Int'l Brotherhood of Teamsters*, 905 F.2d 610, 621 (2d Cir. 1990). Thus, the doctrines of *res judicata* and collateral estoppel apply to the Opinion and judgment of dismissal. A true and correct copy of the Opinion is attached to the Delehey Declaration as Exhibit F. The Debtors request that the Court to take judicial notice of the Opinion.

[6] Nora also has filed adversary proceeding no. 13-01208 before this Court. The current First Amended Complaint (the "Amended Adversary Complaint") in that action (Dkt. No. 3) names essentially the same defendants as the Amended Complaint and makes essentially the same claims, but is longer. The adversary proceeding is being administered in accordance with the supplemental case management procedures approved by this Court for adversary proceedings commenced by current and former borrowers [Dkt. # 3293].

manner to all the defendants. (Opinion 4 n.4.) Indeed, the District Court remarked on "the confusing state of her pleading." (Opinion 15.)

C. The Wisconsin State Court Litigation and Appeals

9. Nora is a practicing lawyer who is conversant with bankruptcy law.[7] Some years ago, Nora took out a mortgage on her home in Wisconsin (*Id.* 1; Delehey Declaration ¶ 5.) The original mortgagee later assigned the mortgage to RFC. (Opinion 1-2; Delehey Declaration ¶ 5.) In 2009, RFC commenced a foreclosure action in Dane County, Wisconsin, Circuit Court (*Residential Funding Co., LLC v. Nora,* Case No. 09-1096) (the "Wisconsin State Action"). Nora defended the Wisconsin State Action, but in February of 2010 the Wisconsin Circuit Court granted RFC's summary judgment motion; shortly afterwards, it also denied Nora's pending motion to dismiss. The Circuit Court entered a judgment of foreclosure in March of 2010 (the "Wisconsin State Court Judgment"). Nora did not appeal the Wisconsin State Court Judgment. Instead, later on she filed an untimely motion to vacate the foreclosure. The Circuit Court denied that motion. (Opinion 5; Delehey Declaration ¶ 5.) Nora unsuccessfully took two appeals to the Wisconsin intermediate appellate court, the Wisconsin Court of Appeals for the Fourth District (the "Wisconsin State Appeals"). (Opinion 5-6; Delehey Declaration (Opinion 9; Delehey Declaration ¶ 5.) Although Nora petitioned the Wisconsin Supreme Court for review (Delehey Declaration ¶ 5), the Wisconsin State Court Judgment is a final judgment notwithstanding the appeal. (Opinion 9-10; *see also infra* Section I.A, ¶ 18.) RFC conducted the foreclosure sale and bid in the property. The Circuit Court confirmed the sale in March of 2011.[8] (Opinion 5;

[7] A review of the United States PACER site discloses almost five pages of cases in which she has been counsel to consumer debtors. *See* Delehey Declaration, Exhibit A.

[8] When Nora failed to abide by her promise to vacate the premises and remove her belongings by April 4, 2011 so that RFC could list the property for sale, RFC had to have her evicted in September of that year. She left behind personal property and some water-damaged, moldy legal files. RFC discarded the files and had her personal (Cont.'d)

Delehey Declaration ¶ 5). The property was recently sold to a third party. (Delehey Declaration ¶ 5.)

D. The District Court Action and Seventh Circuit Appeal

10. On November 30, 2010, Nora commenced the District Court Action by filing her original complaint. Before the defendants answered, she filed the Amended Complaint on March 1, 2011. This is the very complaint that Nora has attached to the Claims to augment her cryptic descriptions of the basis for her claim in Box 2 of the ResCap Claim. The District Court Amended Complaint asserts "an allegedly fraudulent scheme involving plaintiff's [Nora's] mortgage [that] violated provisions of the Racketeer Influenced and Corruptions Act . . . and the Fair Debt Collections Act . . . ." (Opinion 1, 6.) It focuses on "an alleged fraudulent assignment of the mortgage to . . . [RFC]." (*Id.* 3.) Its gravamen is "the foreclosure proceeding generally, and specifically upon alleged misrepresentations, made by defendants during the course of the proceedings in furtherance of the alleged conspiracy." (*Id.* 11.)

11. The defendants filed motions to dismiss on April 5, 2011 alleging a variety of grounds, including *res judicata*, collateral estoppel and the *Rooker-Feldman* doctrine, which holds that a federal court lacks subject matter jurisdiction to review a final state court judgment. (*Id.* 6 n.1; 16; Delehey Declaration ¶ 8.) [9] On September 30, 2012, the District Court granted the motions to dismiss based upon the *Rooker-Feldman* doctrine. (Opinion 11-16.) The District Court concluded that, "Since Nora is unquestionably attempting to challenge the 2010 state foreclosure judgment [in the Wisconsin State Action] against her by pursuing these federal

property placed in storage. Only in May of 2013 was the stored personal property auctioned off. As of that time, Nora had made no inquiry about her property or files. (Delehey Declaration ¶ 6.)

[9] The Debtors later explain the *Rooker-Feldman* doctrine in detail, *infra* Section II.A.

claims, her complaint is barred by the *Rooker-Feldman* doctrine." (*Id.* 13.)[10] It entered its judgment dismissing the District Court Action on October 2, 2012 (the "District Court Judgment"). (Delehey Declaration, Exhibit G.) The District Court later denied Nora's motion under FRCP 60 to vacate its judgment and her motion for reconsideration. (Delehey Declaration Exhibit H.) On March 27, 2013, Nora appealed these latter rulings and the District Court Judgment to the Seventh Circuit. (Delehey Declaration Exhibit I.) In that appeal, No. 13-1660, Nora filed her opening brief and the appellees filed their opposition briefs. Nora's reply was due on August 30, 2013, but she has not filed it. (*Id.* Dkt. Nos. 31-35.) Thus, briefing is closed and the appeal is pending. As noted earlier, *supra* n.4, the District Court's judgment is final notwithstanding the appeal for purposes of *res judicata*, collateral estoppel and *Rooker-Feldman*.

RELIEF REQUESTED

12. The Debtors file this Objection pursuant to Bankruptcy Code section 502(b) to disallow and expunge the Claims from the Debtors' claims register in their entirety.

OBJECTION

13. Before turning to the Debtors' specific objections to the Claims, it is instructive to appreciate the posture the Claims in light of the District Court Action and the Wisconsin State Action. Here is the residue of essential facts for purposes of this Objection:

A. The Wisconsin State Court Judgment for the Subject Debtors against Nora in the Wisconsin State Action is final.

B. Nora's alleged claims in the District Court Action against the Subject Debtors and other defendants are essentially the same as they were in the Wisconsin State Action.

C. The District Court Action was dismissed because the *Rooker-Feldman* doctrine prevents federal courts from entertaining a collateral attack by

[10] The District Court noted that its reliance on *Rooker-Feldman* meant that the other grounds to dismiss urged by the defendants were moot, but it noted that other theories of the defendants were "well-reasoned." (Opinion 2.)

Nora on the Wisconsin State Court Judgment for the Subject Debtors and against her on essentially the same claims.

D. For purposes of *res judicata*, collateral estoppel and the *Rooker-Feldman* doctrine, the District Court Judgment is a final judgment.

E. The Claims assert claims against the Subject Debtors that are identical to those made in the District Court Action in which the District Court found that they were essentially the same as those made in the Wisconsin State Action.[11]

The applicability of every argument that the Debtors make in this Objection except regarding the adequacy of the pleadings (*see infra* section III) follows inexorably from these simple facts.

14. A filed proof of claim is "deemed allowed, unless a party in interest . . . objects." Code § 502(a). A properly completed proof of claim is *prima facie* evidence of the validity and amount of a claim. *See* FRBP 3001(f). A party in interest may object to a proof of claim, and once an objection is made, the court must determine whether the objection is well founded. *See* 4 COLLIER ON BANKRUPTCY ¶ 502.02[2] (16th ed. rev. 2012).

15. Although FRBP 3001(f) establishes the initial evidentiary effect of a filed claim, the burden of proof "[r]ests on different parties at different times." *In re Smith*, No. 12-10142, 2013 WL 665991, at *6 (Bankr. D. Vt. Feb. 22, 2013) (citation omitted). The party objecting to the proof of claim "bears the initial burden of providing evidence to show that the proof of claim should not be allowed." *In re MF Global Holdings, Ltd.*, Nos. 11-15059 (MG), 11-02790 (MG) (SIPA), 2012 WL 5499847, at * 3 (Bankr. S.D.N.Y. Nov. 13, 2012). If the objecting party satisfies its initial burden and "the presumption of *prima facie* validity is overcome—e.g., the objecting party establishes that the proof of claim lacks a sound legal basis—the burden shifts to the claimant to support its proof of claim unless the claimant would not bear that burden outside

[11] Actually, because the District Court Amended Complaint is not attached to the RFC Claim, the description of that claim is limited to what is in Box 2 of the proof of claim form. However, in the interest of completely wrapping up the Claims in one proceeding, the Debtors will analyze the RFC Claim both as it stands and as though it also attached the District Court Amended Complaint.

of bankruptcy." *Id.* (citing *In re Oneida Ltd.*, 400 B.R. 384, 389 (Bankr. S.D.N.Y. 2009) ("A proof of claim is prima facie evidence of the validity and amount of a claim, and the objector bears the initial burden of persuasion. The burden then shifts to the claimant if the objector produces evidence equal in force to the prima facie case . . . which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency.")). Once the burden is shifted back to the claimant, "it must prove its claim by a preponderance of the evidence." *Id.* (citations omitted).

16. Code section 502(b)(1) provides, in relevant part, that a claim may not be allowed to the extent that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law." Whether a claim is allowable is "generally [ ] determined by applicable nonbankruptcy law." *In re W.R. Grace & Co.*, 346 B.R. 672, 674 (Bankr. D. Del. 2006). "What claims of creditors are valid and subsisting obligations against the bankrupt at the time a petition is filed, is a question which, in the absence of overruling federal law, is to be determined by reference to state law." *In re Hess*, 404 B.R. 747, 749 (Bankr. S.D.N.Y. 2009) (quoting *Vanston Bondholders Protective Comm. v. Green*, 329 U.S. 156, 161 (1946)).

17. Here, the Debtors object to the Claims on the basis that they (a) are barred by res judicata and collateral estoppel arising from the Wisconsin State Action; (b) are barred by the *Rooker-Feldman Doctrine*; and (c) fail to make a "short and plain statement" of grounds for relief in violation of Rule 8(a)(2).

I. CLAIM PRECLUSION: THE CLAIMS ARE BARRED BY THE JUDGMENTS AGAINST NORA IN THE WISCONSIN LITIGATION

A. RES JUDICATA AND COLLATERAL ESTOPPEL VIA THE WISCONSIN STATE ACTION

18. The Wisconsin State Court Judgment for the Subject Debtors against Nora in the Wisconsin State Action is *res judicata* and collateral estoppel as to the Claims. Federal courts look to state law for the preclusive effects of a state court judgment. *See, e.g.*, *Migra v. Warren City Sch. Dist.*, 465 U.S. 75, 81 (1984); *Disorbo v. Hoy*, 343 F.3d 172. 182-83 (2d Cir. 2003); *Omernick v. LaRocque*, 406 F. Supp. 1156, 1159 (1976); *see also* 28 U.S.C. § 1738 (federal courts must afford state court decisions full faith and credit). In Wisconsin,

> a (1) final judgment (2) on the merits precludes later assertion of (3) the same cause of action between (4) the same parties. *O'Brien v. Hessman*, 16 Wis.2d 455, 458-59, 114 N.W.2d 834 (1962). This is claim preclusion or, less descriptively, merger and bar. In addition, an issue which is (1) actually litigated in another case where (2) determination of the issue was necessary to the judgment is conclusively determined in subsequent actions as against a party to the prior action by (3) a final judgment in the prior lawsuit. *Premke v. Pan Am. Motel, Inc.*, 35 Wis.2d 258, 270 151 N.W.2d 122 (1967). This is issue preclusion or collateral estoppel.

Omernick, 405 F. Supp. at 1159; *See also Schmid v. Bank of Am., N.A.*, 494 B.R. 737, 746-47 (Bankr. W.D. Wis. 2013) (Wisconsin state court default judgment supports *res judicata*, collateral estoppel and *Rooker-Feldman* in bankruptcy court). A judgment that is on appeal is a judgment on the merits for purposes of *res judicata*. Omernick 405 F. Supp. at 1160.

19. Each of the elements for res judicata has been met here. First, the Wisconsin State Court Judgment is a final judgment on the merits. Second, Nora and the Subject Debtors were opposing parties. And third, the allegations made in the Claims arise from the same transaction or series of events at issue in the Wisconsin State Action. As the District Court found, the claims in the District Court Amended Complaint were the same as the claims in the

Wisconsin State Action, and because the Claims are expressly based on the District Court Amended Complaint, the Claims, too, are the same as in the Wisconsin State Action. Accordingly, the Claim should be disallowed and expunged on grounds of *res judicata*.

20. The Claims should be disallowed and expunged on the basis of collateral estoppel, as well. As noted above, the Claims necessarily are based on the same issues of fact and law that were at issue in the Wisconsin State Action because the sole supporting documentation for the Claims is the District Court Amended Complaint. Moreover, Nora defended and lost the Wisconsin State Action. Hence, she had a full and fair opportunity to litigate the facts at issue.

B. RES JUDICATA VIA THE DISTRICT COURT ACTION: THE *ROOKER-FELDMAN* DOCTRINE

21. The federal doctrine of *res judicata* mirrors that of Wisconsin (and many other jurisdictions):

> "'Under the doctrine of res judicata, or claim preclusion, [a] final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action.'" *Overview Books, LLC v. United States,* 438 Fed. Appx. 31, 33 (2d Cir. 2011) (quoting *EDP Med. Computer Sys., Inc. v. United States,* 480 F.3d 621, 624 (2d Cir. 2007)). Res judicata bars the filing of a subsequent claim if the "earlier decision was (1) a final judgment on the merits, (2) by a court of competent jurisdiction, (3) in a case involving the same parties or their privies, and (4) involving the same cause of action." *EDP Med. Computer Sys.*, 480 F.3d at 624 (quoting *In re Teltronics Servs., Inc.*, 762 F.2d 185, 190 (2d Cir.1985)).

Sumter v. DPH Holdings Corp. (In re DPH Holdings Corp.), 468 B.R. 603, 616 (S.D.N.Y. 2012).

22. Moreover, as explained *supra* n.4, a federal judgment is final for purposes of *res judicata* even if an appeal is pending. *See also Deposit Bank of Frankfort v. Bd. of Councilmen of the City of Frankfort,* 199 U.S. 487, 499 (1903); 18A CHARLES ALAN WRIGHT, ARTHUR R.

MILLER & EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE § 4433 at 78-79 (West 2002). The District Court found that the District Court Amended Complaint was barred by *Rooker-Feldman*. The parties are the same and because the District Court Amended Complaint is the express basis for the Claims, the claims are the same. The Claims are therefore barred by the *res judicata* effect of the District Court Judgment against Nora finding that under *Rooker-Feldman* it lacked subject matter jurisdiction as a federal court to consider the claims in the District Court Amended Complaint.

II. THE *ROOKER-FELDMAN* DOCTRINE APPLIES DIRECTLY IN THIS COURT

23. Not only are the Claims barred indirectly by the *Rooker-Feldman* doctrine through the *res judicata* effect of the District Court Judgment dismissing the Amended Complaint based upon that principle, but the Claims are directly barred by the *Rooker-Feldman* doctrine in this Court.

24. The *Rooker-Feldman* doctrine is premised upon two United States Supreme Court decisions: *Rooker v. Fid. Trust Co.*, 263 U.S. 413 (1923) and *District of Columbia Court Appeals v. Feldman*, 460 U.S. 462 (1983). The doctrine bars the exercise of federal court jurisdiction where the claims are "inextricably intertwined" with the claims adjudicated in a state court. *Feldman*, 460 U.S. at 483, n.16. According to *Rooker-Feldman*, and their progeny, this Court lacks subject matter jurisdiction to sit in the place of a Wisconsin state court of appeal reviewing facts or determinations made by Wisconsin state courts, particularly where there is a means of appeal expressly provided under state law. *See Washington v. Wilmore*, 407 F.3d 274, 285 n.3 (4th Cir. 2005). *See also Hoblock v. Albany Cnty. Bd. of Elections*, 422 F.3d 77 (2d Cir. N.Y. 2005); *Reusser v. Wachovia Bank, N.A.*, 525 F.3d 855, 858 (9th Cir. 2008). *Rooker-Feldman* also may apply "over a suit that is a *de facto* appeal from a state court judgment" because in such

circumstances, "the district court is in essence being called upon to review the state court decision." *Id.*, 525 F.3d at 858-859 (internal quotations omitted). *See generally Schmid*, 497 B.R. at 745-46.

25. In 2005, the United States Supreme Court squarely addressed the principles of the *Rooker-Feldman* doctrine for the first time since the *Feldman* decision. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 287 (2005). In *Exxon Mobil*, the Court set forth the following rule of application for the doctrine: "The *Rooker-Feldman* doctrine, we hold today, is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Id.* at 284. The *Exxon Mobil* test for the application of the *Rooker-Feldman* doctrine can be divided into the following four elements: "[1] cases brought by state-court losers [2] complaining of injuries caused by state-court judgments [3] rendered before the district court proceedings commenced and [4] inviting district court review and rejection of those judgments." *Id.*; *Hoblock*, 422 F.3d at 85.

26. The Claims satisfy all four elements. Nora filed the Claims notwithstanding the dismissal of the Wisconsin State Action with prejudice. The Wisconsin State Court Judgment was final long before these Chapter 11 Cases were filed. Finally, as the District Court found, the claims in the District Court Amended Complaint, which is the express basis for the Claims, are the same claims that Nora made in the Wisconsin State Action.

27. The propriety of the application of *Rooker-Feldman* to the Claims is uncanny. "[C]ourts in this Circuit have consistently held that any attack on a judgment of foreclosure is clearly barred by the *Rooker-Feldman* doctrine." *Niles v. Wilshire Inv. Grp., LLC*, 859 F. Supp.

2d 308, 334 (citing *Ashby v. Polinsky*, No. 06-CV-6778 (DLI), 2007 WL 608268, at *1 (E.D.N.Y. Feb. 22, 2007) (internal quotation marks and citation omitted), *aff'd* 328 Fed. App'x 20 (2d Cir. 2009); *See Done v. Wells Fargo Bank, NA*, No. 08-CV-3040 (JFB)(ETB), 2009 WL 2959619, at *3 (E.D.N.Y. Sept. 14, 2009); *see also Ward v. Bankers Trust Co. of Cal., N.A.*, No. 09-CV-1943 (RRM)(LB), 2011 WL 1322205, at *5 (E.D.N.Y. Mar. 29, 2011)). *See also Schmid*, 497 B.R. at 746.

28. It follows, therefore, that *Rooker-Feldman* deprives this Court (and every other federal court) of subject matter jurisdiction to consider the Claims. They therefore must be disallowed and expunged.

III. THE CLAIMS ARE DEFECTIVE AS PLEADINGS

C. FEDERAL PLEADING RULES APPLY

29. Several courts, including those in this district, have applied the federal pleadings standards when assessing the validity of a proof of claim. *See In re DJK Residential LLC*, 416 B.R. 100, 106 (Bankr. S.D.N.Y. 2009) ("In determining whether a party has met their burden in connection with a proof of claim, bankruptcy courts have looked to the pleading requirements set forth in the Federal Rules of Civil Procedure.") (citing *In re Rockefeller Ctr. Props.*, 272 B.R. 529, 542, n.17 (Bankr. S.D.N.Y. 2000), *aff'd sub nom., NBC v. Rockefeller Ctr. Props. (In re Rockefeller Ctr. Props.)*, 226 B.R. 52 (S.D.N.Y. 2001), *aff'd*, 46 Fed. App'x 40 (2d Cir. 2002); *Flake v. Alper Holdings USA, Inc. (In re Alper Holdings USA, Inc.)*, 398 B.R. 736, 748 (Bankr. S.D.N.Y. 2008) ("The documents attached to the proofs of claim should be treated, for purposes of a motion to disallow claims, like documents that are attached to or relied upon in a complaint are treated on a Rule 12(b)(6) motion to dismiss. . . ") (citation omitted).

30. Accordingly, the adequacy of the Claims, which are based on the assertions made in the cursory entries in Box 2 and in the attached Amended Complaint, should be judged by Rule 8(a)(2).

D. THE AMENDED COMPLAINT FAILS TO SATISFY RULE 8(A)(2)

31. Under Rule 8(a)(2), a "pleading that states a claim for relief must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief."). Rule 8(a)(2) "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). It is insufficient for a complaint to simply "le[ave] open the possibility that a plaintiff might later establish some 'set of undisclosed facts' to support recovery." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 561 (2007). Rather, it must plead sufficient facts "to provide the 'grounds' of his 'entitle[ment] to relief,' [which] requires more than labels and conclusions, and [for which] a formulaic recitation of a cause of action's elements will not do." *Id*. at 545 (citation omitted). The purpose of Rule 8(a)(2) is to ensure that the complaint "give[s] enough detail to illuminate the nature of the claims *and allow defendants to respond.*" *Regis Techs., Inc. v. Oien (In re Oien)*, 404 B.R. 311, 317 (Bankr. N.D. Ill. 2009) (emphasis added) (citations and internal quotation marks omitted). In other words each defendant must know what he is charged with. *See, e.g., Jones v. Pollard-Buckingham*, 348 F.3d 1072, 1073 (8th Cir. 2003) (though inartful, *pro se* complaint satisfied Rule 8(a)(2) because it "clearly identified how each defendant was involved in the conduct [of] which . . . [the plaintiff] complains."); *Forman v. Salzano (In re Norvergence, Inc.)*, 405 B.R. 709, 736-37 (Bankr. D.N.J. 2009) (complaint's setoff allegations inadequate because, among

other things, it did not identify specific defendants with specific transactions). The Amended Complaint[12] fails to meet this standard in a variety of ways.

32. Assessed as filed, that is, without any attachment, the RFC Claim plainly fails the test of Rule 8(a). In Box 2, Nora entered: "in rem claim for real property illegally taken by Debtor." This is conclusion with any supporting facts alleged. It tells RFC nothing about what conduct it is alleged to have engaged in that would make it liable to Nora. As discussed next, even if Nora had attached the Amended Complaint to the RFC Claim, that claim would be as inadequate as the ResCap Claim.

33. As an initial matter, the District Court Amended Complaint fails to specify sufficiently what which alleged wrongful conduct is attributable specifically to the Subject Debtors. Instead, although mentioning the Debtors on occasion, the District Court Amended Complaint describes the conduct of numerous defendants, sometimes *en banc* as the "GMAC Racketeering Enterprise". Accordingly, the Subject Defendants are left to try to knit together that of which they are accused. Instead of simply slapping the District Court Amended Complaint on to the claim forms as though she were making claims against all the defendants, saying in effect to the Subject Debtors "go figure it out for yourself," Nora should have provided allegations that relate specifically to the Subject Debtor against which the claim is being filed.

NOTICE

34. The Debtors have provided notice of this Motion in accordance with the Case Management Procedures Order, approved by this Court on May 23, 2012(Dkt. No. 141) and the Procedures Order.

[12] Henceforth, in this part of the Objection the Debtors will refer only to the Amended Complaint's allegations rather than anything in Box 2 of the Claims since the latter entries are cryptic and uninformative.

CONCLUSION

WHEREFORE, the Debtors respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem proper.

Dated: September 20, 2013

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